

**MINUTES OF THE 18 JANUARY 2006
TRINIDAD PLANNING COMMISSION MEETING**

I. ROLL CALL

Chairman Kenny noted all Commissioners were present and called the meeting to order at 7:35p.m. Staff in attendance were Parker and Leachman.

II. APPROVAL OF MINUTES – December 14, 2005.

Johnson requested a minor amendment on page 2, paragraph 4, 4th sentence, changing “radioactivity” to “radiation”. Lake moved to approve the minutes as amended. Johnson seconded. All were in favor. The motion passed 5-0.

III. APPROVAL OF AGENDA

There were no modifications to the agenda.

IV. ITEMS FROM THE FLOOR

There were no items from the floor. Bryce allowed anyone with special needs to speak on the public hearing item (U.S. Cellular). Alice Foster (308 Ocean Ave.) requested permission to address the Commission. She asked the Commission to consider the overall trend of development on Trinidad Head rather than the specific item at hand. She felt that a lot of small changes will have cumulative effects that go unnoticed until it is too late.

V. AGENDA ITEMS

PLANNING COMMISSION DISCUSSION / ACTION / PUBLIC HEARING ITEMS

1. US Cellular 2005-13: Design Review, Coastal Development Permit and Conditional Use Permit to establish a new, approximately 25' x 50' communication facility on Trinidad Head, just to the north of the existing communications site. The site will include a 50' tall wooden pole with 2 sets of Cellular Panel Antennas, a 12' x 12' x 10' equipment shelter on a concrete slab all surrounded by a green vinyl slat 6' tall fence topped with barbed wire. Trinidad Head; APN: 042-121-051.

Kenny opened the discussion and asked Parker to address the modifications to the staff report as outlined in her memo of January 6th. She stated the project had been scaled down, with a smaller pole and a smaller site area now proposed. She also noted that there had been some correspondence between City staff and Coastal Commission staff regarding zoning ordinance interpretation (see letter dated December 20, 2005). She indicated that there was some disagreement, but City staff was standing by their original recommendations.

Kenny asked the applicant's agent Tom McMurray to provide a presentation of their project. He explained the proposed modifications and presented several coverage maps showing existing and proposed signal contours. He also

introduced Bernie Gribbon, U.S. Cellular representative, and Ed Johnson, RF Engineer who would be available to answer questions. Kenny opened the public hearing to questions for the applicant's agents.

The first audience question for McMurray was how many carriers existed on the head. McMurray explained that the site is leased by CalNorth, who sublets to Edge and Sprint; all three companies have antennas adjacent to the proposed site. He also indicated that the FCC license required service providers that have leased public airwaves to provide the best possible coverage.

Commissioners Kenny and Johnson had several questions regarding the coverage maps that were discussed. McMurray explained that one map had a print error and explained the intended information.

Commissioner Johnson also had a question about the Humboldt County e911 plan. Gribbon described the new system which allows cellular phone locating by emergency personnel to within a few feet. He said that county had no specific date for implementing the plan, but that the industry is preparing the network for that eventuality.

Commissioner Johnson then asked about the life expectancy of the current TDMA service with idea that the new system would replace the existing, freeing up pole space in the near future that might accommodate a US Cellular antenna; this would avoid the need for an expanded site. McMurray said that even if the analog system completely went away, there would still be no room for the proposed US Cellular antenna. Ed Johnson continued with additional technical details about the various systems and equipment, which included minimum separation distances. Commissioner Johnson felt that not all of the potential development options had been analyzed and that more creative solutions could still be found.

Several audience members asked if the applicant had studied any alternative locations. McMurray indicated that they had, but no other location would provide the line-of-sight required for digital services in the targeted area. He also said the demand for "in-house" (indoor) and data services, and complaints regarding existing phone service were driving the decision-making regarding the investment in new facilities.

Mike Hentz (785 Underwood Dr.) asked who owns the property and how many existing poles were on the Head. Kenny indicated that the City owns the property and there are two existing poles on City property, along with various supporting equipment. He noted that there are also 3 or 4 PG&E power poles on City property, as well as a variety of poles, buildings and other equipment on the Federal property at the top of the Head.

Brad Twoomy (116 Himalaya Dr.) asked about roaming services for U.S. Cellular customers that may be provided by the existing antennas. McMurray had no information on roaming agreements, but indicated that the different types of services usually do have such agreements, but in this case, US Cellular has determined that a new pole and antenna are necessary.

Jim Calladine asked about the economic justification for both the company and the City. Ed Johnson said that the demand for new digital services was a key factor in deciding to invest in the site, and that US Cellular would not make such an expensive investment without substantial reason. Kenny addressed the second part of the question regarding the City's economic interest. He said that the City does get rent from the existing site, but that issue is outside the purview of the Planning Commission and should be taken up with Council instead.

Sungnome Madrone (1519 Adams Fox Farm Rd., Trinidad) had concerns about noise on the site. McMurray said no generator was proposed nor any equipment that would create noise.

Kenny closed the question and answers session and opened the public comment period.

Naomi Silvertree (1289 McCallum Cir. #21, Arcata) asked the Commission to consider negative health and aesthetic impacts related to the proposed project.

Donna Lin (514 Ewing St.) read a letter from Mary Wilbur (866 Edwards St.) who said she was not in favor of the project and was concerned about the precedent that was being set for additional future development.

Jim Calladine indicated that he was an expert in travel and tourism and that he felt the Head was a visual icon for Trinidad. He felt that the proposed pole would negatively affect tourism.

Kim Tays (487 View Ave.) disputed the responses to the Conditional Use Permit finding (B.2) included in the staff report in terms of public safety / traffic. She also felt that there would be significant aesthetic impacts inconsistent with the Design Review and View Protection findings in the staff report and noted that the barbed wire topping the fence proposed for the site was especially offensive. She wondered why staff was in favor of this project.

Stan Binnie (487 View Ave.) also disagreed with the findings in the staff report. He argued with the finding on page 5, which states that the proposed use does not conflict with open space and recreation uses on the Head. He presented a map which shows the site's vehicular access road overlapping the pedestrian trail. He pointed out 4 sharp / blind corners which represented pedestrian hazards. Further, he took issue with Conditional Use Permit finding "A," on page 6, which states the project is desirable and compatible with the area and will not

be readily visible. He showed pictures that he believed conflicted with what was stated in the staff report.

Cyndi Lindgren ([REDACTED] Westgate Dr.) stated she was not in favor because the use was not a public benefit, but a lucrative private endeavor. She also noted that, as a US Cellular customer, she felt her service was fine.

Kathy Bhardwaj (308 Ocean Ave.) stated she was not in favor because the site is sacred to the Tsurai tribe. She also hoped the City would take an organized approach to provide for planned, orderly growth of the Head.

Brad Twoomy asked if NOAA or Scripps Institute had been consulted.

Sungome Madrone said he was opposed because the site was a sacred place for Tsurai, and he feels development on the Head should be strictly limited. He also noted that, as a US Cellular customer, he felt his service was fine.

Bryan Rosen (364 Ocean Ave.) indicated that he wanted to see the Head restored to a natural state and that no more antennas should be allowed; although he indicated that he did not have a problem with the federal government facilities.

Victoria Sackville (364 Ocean Ave.), speaking for the newly formed group "Friends of the Head," asked that the commission delay any action until the group could seek legal advice. She also stated that NOAA and Scripps may want to comment on the project and how the cellular antennas may interfere with their monitoring equipment on the Head.

Kenny closed the public comment period and began Commission deliberations.

McMurray commented that the applicant is willing to redesign some aspects of the project and that public safety aspects of cellular service are a positive, citing the New Year's Eve storms as an example. He stated that the service is a public utility regulated by the PUC. Finally, he noted that they will consult with the Tsurai if the project site is approved, but before applying for building permits.

Parker made several points in response to public comments. She clarified that she has to objectively and quantitatively represent the City laws, including the Zoning Ordinance and General Plan and not the public directly. She noted that the Planning Commission and Council represent the public's interest and make qualitative community decisions. Parker stated that she was not "in favor" of this project, and could not, in fact, take any stance on a project, but could only objectively analyze it in terms of City ordinances. She explained that staff reports are almost always written in a positive manner, because conflicts with City ordinances are generally worked out prior to the project application being finalized. However, there is an alternative motion for denial in the staff report in

case the Commission determines that the public has presented conflicting evidence. Parker also clarified that she had worked with the applicant to site and condition the project to minimize impacts but did not directly address aesthetics, because qualitative design review decisions were to be made by the Planning Commission, considering community perspectives.

Parker also noted, in response to publicly stated issues, that there is a proposed condition of approval addressing and limiting noise impacts and that no referrals were received back from NOAA or Scripps, who had been sent a public notice. She noted that the federal Coast Guard and weather facilities are totally outside the control of the City, which is not even notified about what goes on up there. Parker also explained that the proposed rezoning was recommended by both the Coastal Commission staff and City staff in order to better reflect existing, legally permitted uses on the site, as well as to plan for future uses, and not simply to allow this project, or others, to move forward, as implied by public comments.

Parker noted that several unresolved legal issues had come up. First, cellular communication facilities are regulated by the Federal Communications Commission (FCC), which supersedes state laws, including the Coastal Act, although there is a Federal Coastal Zone Management Act. Parker stated that she had been in contact with the City Attorney about the legal issues. She noted that previous court cases have made it clear that the City must remain competitively-neutral in its decision-making; the City may not deny this project, just because there is other cellular service in the area. Finally she noted that a recent court case rejected another city's denial of a cellular tower based on aesthetics alone, but that the case had not yet been published, and so the City attorney had not had a chance to review it. Because Trinidad already has ordinances in place protecting views and aesthetics, it may be in a better position to defend such an action.

Kenny stated that it seemed the central issue was weather or not the proposed use conflicts with the stated goal of maintaining open space and recreation uses on the Head. He said he had not seen a good, objective reason to deny the project; other Commissioners expressed agreement. There was an expressed sentiment that the Commission's "hands were tied" by the City's ordinances; there was a discussion about the ability of the Commission to deny this project. Parker stated that there was plenty of leeway within the staff report and required findings for the Commission to make their own decision. She pointed out that the Commission could consider public comments in making, or not being able to make, the required findings.

Odom indicated that development in the City will continue to progress over time, and he did not feel that one more pole will make that much of a difference on the Head. He was satisfied that the applicant had changed the design enough to mitigate all impacts. He also asked if the company would be willing to locate several survey monuments that are in the area. McMurray responded that U.S.

Cellular was already planning on conducting a survey for the project and sharing it with the City.

Fulkerson stated that it was important to protect historic and native values, yet she generally supported the project, because it has public benefits and she did not feel that the impacts would be significant. She hoped that the new service and additional income would be beneficial for the City. Additionally, she did not think it would be fair to deny the application in light of the existing cellular facilities.

Kenny stated that he felt that the capacity of the Head in terms of cellular poles had not yet been reached. He added that eventually these types of developments would result in significant cumulative impacts, but that point has not been reached yet.

Fulkerson asked staff if it would be an option to hold off a decision until a new plan could be adopted that would better address impacts to recreation use of the Head. Parker indicated that she spoke to the applicant about delaying for six months or a year to look at rezoning and that they were not willing to do that. McMurray concurred.

Commissioner Johnson suggested that a mock up be set up so residence could view it before making a decision. He also supported the development of a long-term management plan for the Head. Finally, he said he was not clear about some of the legal issues and the pending 9th Circuit court case, and wanted to hold off a decision until they know how those items would affect Trinidad. He pushed for the creation of some alternative designs in order to reduce impacts.

Lake said she makes her decision based on a number of factors including public comment and the established laws. In this case she feels that the established rules favor the applicant, but that the public had presented a case that the primary purpose of open space and public recreation on the Head may be negatively impacted by the project.

Odom made a motion to approve the application as originally submitted. It died for lack of a second.

Kenny moved to approve the scaled-down proposal (shorter pole and smaller site) with no barbed wire on the fence. Odom seconded. Kenny and Odom voted for the motion. Fulkerson, Lake and Johnson voted against it. Motion failed 3-2.

There was a discussion about project design alternatives that would have less impact on aesthetic coastal resources and public recreational and open space uses. After being posed the question from Commissioner Lake, the audience (except for one) indicated that there was no alternative design that could possibly make the project acceptable to them.

McMurray asked that the Commission make a decision rather than continuing the hearing. Parker suggested the alternative of denying the project without prejudice. In this way, the applicant had the option to come back with an alternative design rather than waiting a whole year to reapply if the project were just denied. Johnson made a motion to deny without prejudice. Fulkerson seconded. Johnson, Lake and Fulkerson voted in favor; Odom and Kenny voted against. Motion passed 3-2.

VI. STAFF REPORT - None.

VI. COUNCIL LIAISON - None.

VIII. ADJOURNMENT

The meeting was adjourned at 10:30.

Respectfully submitted by: Todd Leachman
Secretary to the Planning Commission
City of Trinidad